



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/173331

PRELIMINARY RECITALS

Pursuant to a petition filed March 29, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the medical documentation is sufficient to demonstrate that a request for Medicaid payment for gastric bypass surgery can be approved.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] on behalf of the
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization request for gastric bypass surgery was submitted on Petitioner's behalf to her MA/BadgerCare+ HMO in February 2016. On April 14, 2016, the HMO issued written notice of the denial of the request. That denial prompted the instant hearing request.

3. The HMO must follow the same standards for gastric bypass surgery approval as are used in “regular” fee-for-service MA. The HMO’s basis for denial was that Petitioner did not have a co-morbid medical condition demonstrated to be unresponsive to appropriate treatment.
4. Petitioner, age 33 (DOB [REDACTED]), has a Body Mass Index of about 44. She is noted to have diagnoses of obesity, obstructive sleep apnea and hypertension.

DISCUSSION

Petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency:

...

(f) Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.

Wis. Stat. § 49.46(2)(f).

I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the “medical emergency” requirement meant that the person’s weight had to pose an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; and (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. They contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

II. PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was amended on December 7, 2005, and again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.

- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied Petitioner's request was denied is that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. *Again, see Wis. Stat. § 49.46(2)(f)*. The criteria are drafted because of the mandate that gastric bypass is limited to medical emergencies. *Wis. Adm. Code, §HFS 107.06(4)(h)*. None of Petitioner's diagnoses other than morbid obesity are life-threatening conditions. The medical evidence indicates that Petitioner has moderate obstructive sleep apnea but the documentation does not demonstrate that it is not controlled with an auto titration positive pressure device. Further, Petitioner's blood pressure was 117/81 in a December 30, 2015 reading at her psychiatrist office and she has been gradually taken off of a psychiatric medication that raises blood pressure.

The HMO properly applied the current guidelines here and denied this authorization request. Petitioner may submit a new authorization request but again the statutory requirement is that the Medicaid program will only pay for gastric bypass surgery in case of emergency which has been defined as a co-morbid medical condition(s) unresponsive to appropriate medical treatment.

CONCLUSIONS OF LAW

The evidence offered on behalf of Petitioner does not, at this time, demonstrate that Petitioner meets the requirements for Medicaid payment for gastric bypass surgery.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 17, 2016.

Division of Health Care Access and Accountability